

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5748 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PURSHOTTAMDAS BHAGWANDAS

Versus

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Appearance:

MR HK RATHOD for Petitioner

MR GN DESAI for Respondent No.1 & 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, a driver of Ahmedabad Municipal Transport Service of the Ahmedabad Municipal Corporation, filed this writ petition before this Court and challenge has been made therein to the order dated 29.11.83 of the respondent No.2, under which he was ordered to be dismissed from the services. A copy of this order has been filed as annexure 'E' to this petition.

3. By way of interim relief, the operation and implementation of the order, annexure 'E', was stayed by this Court on 30th November 1983. It is not in dispute between the parties that the interim relief which has been granted by this Court on the aforesaid date continues till this date, meaning thereby the order of dismissal of the petitioner from services was not given effect to.

4. The learned counsel for the petitioner admits that against the impugned order, the petitioner has a right of appeal which he has not availed of. When a right of appeal is available against the order impugned in this Special Civil Application, this writ petition is not maintainable. In a case where alternative remedy is available to the petitioner, this Court should have insisted the petitioner to first avail that remedy. In the matter of dismissal of employees after holding departmental inquiry, an appeal has to be filed in all cases instead of approaching this Court, and the reason is very obvious. This Court, sitting under Article 226 of the Constitution of India, have very limited power of judicial review in the matter of punishment or penalty given to a delinquent employee for proved misconduct. The Appellate Authority has much wide powers on this question and having coextensive powers with original authority, it may substitute its own decision in the matter of punishment or penalty to be given to the delinquent employee for proved misconduct.

5. The learned counsel for the petitioner fairly concedes that the petitioner may be permitted to avail alternative remedy, i.e. appeal, now against the impugned order, but the order of dismissal of the petitioner from services remained stayed for all these years and as such, that interim relief may be extended till the Appellate Authority hears and decides the appeal finally. The learned counsel for the respondent has no objection in case interim relief granted in favor of petitioner is extended till the appeal which is filed by the petitioner now is decided by the Appellate Authority. In view of this statement made by the counsel for the parties, I consider it to be appropriate where the petitioner has to first avail of the remedy of appeal against the impugned order. The petitioner shall file an appeal before the Appellate Authority within one month from the date of receipt of certified copy of this order. He may also file a copy of the impugned order for perusal of the Appellate Authority. It is however made clear that the Appellate Authority will decide the appeal on

merits and it will not dismiss the same on the ground of limitation. The interim relief which has been granted by this Court on 30th November 1983 and ordered to be continued under the order dated 22nd December 1983, shall continue till the appeal, if any, filed by the petitioner is finally decided by the Appellate Authority. I do not find any justification in the prayer made by the petitioner's counsel to further extend the order of interim relief for 15 or 20 days from the date of dismissal of appeal against the petitioner. This is not necessary for the reason that in case ultimately the decision is given against the petitioner, he has remedy available and the authority or the Court to which he will approach will consider the matter for grant of interim relief on merits. However, I fail to see any justification in the apprehension of the petitioner that the Appellate Authority is likely to confirm the decision of the Disciplinary Authority of the dismissal of petitioner from services. The Appellate Authority has to consider the subsequent developments which have taken place. The Appellate Authority, in case ultimately holds that the misconduct alleged against the petitioner is proved, then while examining the question of penalty which has to be give to the petitioner for proved misconduct, it will take into consideration the fact that the petitioner is due for retirement within a short period and secondly for all these years, the order of dismissal has remained stayed and the petitioner worked for all these years. In case the work of the petitioner during this period is satisfactory, meaning thereby, there is no complaint about his work and no further departmental inquiries, then ordinarily, the punishment of dismissal may not be proportionate to alleged misconduct. However, no final verdict can be given in this matter as it is for the Appellate Authority to go on this question and take appropriate decision.

6. In the result, this Special Civil Application is disposed of in aforesaid terms with no order as to costs. Rule stands disposed of accordingly.

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